IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7076 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YASIN ALIAS KANIYO USMANMIYA SAIYED

Versus

DISTRICT MAGISTRATE

Appearance:

MS BHATT for MS KRISHNA U MISHRA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

#. District Magistrate, Ahmedabad, in exercise of powers under sections 3(1) of the Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) passed an order on July 22, 1999, detaining the petitioner Yasin Kaniyo Usmanmiya Saiyed, under the provisions of the PASA

Act. The petitioner challenges the order of detention by this petition under Article 226 of the Constitution India.

#. The grounds of detention indicate that the detaining authority took into consideration 6 offences registered against the petitioner along with statements of 5 anonymous witnesses, whose identity had not been disclosed by the detaining authority in exercise of powers under section 9(2)of the PASA Act. The petitioner is branded as "bootlegger" as well as "dangerous person" as defined under the PASA Act. After considering the possibility of resorting to less drastic remedy, the detaining authority came to a conclusion that the detention under the PASA Act is the only effective remedy that can be resorted to in order to prevent the petitioner from pursuing his illegal and anti-social activities.

#. The petitioner challenges the order of detention on various grounds. However, Ms. Bhatt, appearing for Ms. Mishra, learned advocate for the petitioner has restricted her arguments to the ground of delay in passing the order. Ms. Bhatt submitted that the detaining authority has placed reliance on registered offences and statements of anonymous witnesses. Last offence registered against the petitioner relates to January, 1999. Statements of witnesses were recorded in the month of March, 1999. Thereafter, there is nothing to indicate the genuineness of the so-called illegal and anti-social activities of the petitioner. Despite this, the detaining authority has passed order on July 22, 1999. Thus, there is delay in passing the order. The detaining authority has not considered that live link between the offences and the activities and the detenu was nowhere in existence when the order was passed. There was no urgency of detaining the petitioner under the PASA Act and ordinary law could have been resorted to. The order, therefore, is bad and the same may be quashed and set aside.

#. Mr. Dave, learned AGP has opposed this petition vehemently. He submitted that the statements were verified only on 6th July, 1999 and therefore, there is no delay in passing the order. On being asked, Mr. Dave informed the Court after verifying from the file that the proposal was received by the detaining authority on 2nd June, 1999.

#. Considering the rival side contentions, it is very clear that this is a case of gross delay. The statements

were recorded in the month of March, 1999. Thereafter, there has not been development in the matter. Despite that, the proposal is made and received by the detaining authority on June 2, 1999. Thus, there is delay in sending the proposal. Further after receipt of the proposal on 2nd June, 1999, the orders are passed on 22nd July, 1999 i.e. after about one month and three weeks. This gross and inordinate delay is not tried to be explained by either sponsoring authority or the detaining authority as no affidavit-in-reply is filed. The subjective satisfaction of the detaining authority for the need for detaining the petitioner under the PASA Act in order to immediately prevent the petitioner from pursuing his activities, therefore, cannot be considered as genuine. This would vitiate the order of detention. The order of detention, therefore, deserves to be quashed and set aside.

#. The petition is allowed. The order of detention dated July 22, 1999 passed in respect of the detenu Yasin alias Kaniyo Usmanmiya Saiyed is hereby quashed and set aside and the detenu Yasin alias Kaniyo Usmanmiya Saiyed is ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute with no order as to costs.

[A.L. DAVE, J.]

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